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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/626,271

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Takao Yamaguchi

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RATNERPRESTIA

P.O. BOX 980

VALLEY FORGE, PA 19482

EXAMINER

KOSTAK, VICTOR R

ART UNIT

PAPER NUMBER

2622

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/626,271	<b>Applicant(s)</b> YAMAGUCHI ET AL.	
	<b>Examiner</b> Victor R. Kostak	<b>Art Unit</b> 2622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 102, 103, 105 and 107-124 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 102, 103, 105 and 107-124 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. Applicant's arguments filed on 04/21/08 as an RCE, in light of the amendment, have been fully considered but they are not persuasive. The rejection based on Nemirofsky accordingly still applies and is repeated below from the last Office action.

The examiner has addressed applicant's added claim language and arguments in **bold** to distinguish that language from that copied from the last Office action.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 102, 103, 105 and 107-122 **stand** rejected under 35 U.S.C. 102(b) as being anticipated by Nemirofsky (of record).

**New dependent claims 123 and 124 are also** rejected under 35 U.S.C. 102(b) as being anticipated by Nemirofsky (5,412,416).

The video communication system of Nemirofsky (noting particularly Figs. 1-3 and 5) includes a transmitting stage 4 (Figs. 1 and detailed in Fig. 2) that transmits transmission format information characterized by an identifier and starting time information (control data stage “f” in Fig. 6; col. 9 lines 24-43; col. 10 lines 13-18; col. 17 lines 10-12). Receiving stage 12 (detailed in Fig. 3) receives content that is stored in storage bank 72, and particular content is accessed by identifier data and activated in response to the starting time data; wherein the content data is transmitted to the receiver stage before the format information is likewise transmitted and received.

The activation of content “*at a future point of time*” goes without saying since the content must first be transmitted and received and decoded before it is eventually reproduced (or activated). Furthermore, applicant does not point out any specific event or time instance to which the future point of time relates.

In addition, the text referred to by the examiner spanning lines 29-43 in col. 9 addresses the process of transmitting (and receiving) the content before the starting time of activating (reproducing) the content. Applicant addresses the text and contends that the command data of Nemirofsky cannot be viewed as meeting applicant’s claimed starting time data, but it does the same thing that applicant recites in his claims.

**Applicant now adds language regarding transmission being repeated.**

**Nemirofsky covers this as well in two ways. The first is by re-sending the data including commands when the receiver fails and acknowledges the failure, which informs the headend (col. 15 lines 39-48). The second way is by including redundancy in the transmission as well as duplicating (making redundant) the playback devices (again col. 15 lines 39-57). Additional text covering the success/failure transmission is found in col. 9 line 63 – col. 10 line 7.**

**Applicant also argues that the content data of Nemirofsky is played back immediately upon reception. However, Nemirofsky expressly and clearly points out that the control unit 56 of the receiver system accesses the right channel for playback *at the appropriate time* (col. 8 lines 50-54). More discussion is found in col. 9 where Nemirofsky points out that data segments of the video storage bank 72 can be recalled *for time-delayed playback*. In lines 39-43 (referred to a previous communication), Nemirofsky adds to this**

**by explaining that stored commands will activate the storage bank *to recall a stored segment ... at a selected point.* In col. 12 lines 47-59 Nemirofsky discloses *start date and time and stop date and time* involving the video programs and/or segments as part of his scheduling process. Yet further, Nemirofsky describes the control of video bank 72 that covers start record, stop record, *cueing up, start play and stop play.***

**It is clear that the data in bank 72 at the receiver is accessed at specific times and according to time data included in the transmission.**

Claims 102 and 116 accordingly stand rejected.

As for claim 103, Nemirofsky points out that the data used to prompt the starting time can be any type of start play or trigger (noting again text in col. 9 lines 24-43; col. 10 lines 13-18; col. 17 lines 10-12).

As for claims 105, 107 and 117, the control codes of Nemirofsky correspond to the claimed term for processing (Nemirofsky also discloses playback duration periods).

As for claims 108 and 118, Nemirofsky discloses the associated receiving stage detailed in Fig. 4 which includes the storage unit 72 for the content and transmission format data stage 56 used to activate the stored content on a selective and timed basis. Again, the content data is stored before the starting time of its activation.

**Applicant adds the feature of comparing a current time with the starting time in claims 108, 111, 118 and 119. That is inherent. In order for the delayed playback to be presented at the designated activation time, the receiver *must* include a standard time clock to be used to match the time-of-activation data. (Nemirofsky gives a veiled reference thereto that more generally covers comparison of plural control data in col. 12 line 64 – col.**

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**13 line 6). Regardless, the receiver *must* identify the activation time relative to the eventual actual time of day, which thereby requires a comparison, and upon matching the times, the playback is triggered.**

Regarding claim 109, again, Nemirofsky points out that the data used to prompt the starting time can be any type of start play or trigger (noting again text in col. 9 lines 24-43; col. 10 lines 13-18; col. 17 lines 10-12).

As for claim 110, the control stage 56 activates the content data from storage in an automatic fashion.

As for claims 111 and 119, the control codes of Nemirofsky correspond to the claimed term for processing (Nemirofsky also discloses playback duration periods) in his receiving stage.

Regarding claim 112, Nemirofsky points out that the data used to prompt the starting time can be any type of start play or trigger (noting again text in col. 9 lines 24-43; col. 10 lines 13-18; col. 17 lines 10-12), as mentioned above.

As for claim 113, the control stage 56 activates the content data from storage in an automatic fashion, also mentioned previously.

Claims 114 and 115 recites both the transmitting and the receiving stage involving start time data and processing term data respectively, both of which were addressed above. **Claims 114, 115, 120 and 121 all include both of the newly added features, which were addressed above.**

As for claims 120 and 121, the methods recited therein are covered by the discussion to claims 114 and 115, respectively.

As for claim 122, the content data includes (at least) video data.

**As for new claims 123 and 124, Nemirofsky's receiver station estimates (actually accurately identifies) the time to activate the playback of the content, such timing being predetermined and involving the transmission of the starting time data by control stage "f" shown in Fig. 6.**

**3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.**

**Applicant is informed that patents 4,593,194, 4,672,606, 5,856,979, 6,351,467 all disclose that at times it is necessary to repeat the transmission of packets (all of these and the following patents also all predate applicant's effective filing date).**

**Patents 6,101,025 and 6,205,490 also both disclose the process of repeating transmission in response to an unreliable channel.**

**Patents 5,703,908 and 6,144,709 both state that repeating transmission involving redundancy is "typical".**

**Repeating transmission is said to be "well known" in Patent 6,215,762.**

**Patent 5,953,694 points out that repeating transmission is a "standard" operation.**

**4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor R. Kostak whose telephone number is (571) 272-7348. The examiner can normally be reached on Monday - Friday from 6:30am-3:00pm.**

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh W. Tran can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**Or faxed to:**

**(571) 273-8300**

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Customer Service Office whose telephone number is (703) 308-HELP.

/Victor R. Kostak/  
Primary Examiner  
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